EDUCATIONAL RIGHTS OF MINORITIES: A CONSTITUTIONAL PERSPECTIVE

Research Proposal

Submitted in partial fulfillment

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Contents

Introduction

Survey of Existing Literature

Statement of the Problem

Objective of the study

Hypothesis

Methodology

Proposed Chapterisation

Introduction

Cultural and educational rights of the minorities are very important and essential which works as tool for the upliftment of the minorities .Culture plays a vital role for the congenial development of children who belong to the community of the minorities and that is why the preservation of the culture ,language and script are important .Without education the progress of the community is not possible and the transformation of a society depends on education .All over India it has been found that there is a huge gap between the minority and majority communities.

The problem of minorities is of not recent origin. It was implanted by the British by the formula of "*Divide and Rule Policy*" .Everybody has experience of the partition of the country and the "*hide and seek game*" of the British.

The division of the country on the basic of religion and declaration of an Islamic State in Pakistan were the result of the long treacherous British rule. Loot, murder, plunder and wholesale destruction of opposite community at the time of partition of our nation were the scars on the body politic of India at the dawn of Independence. [1]

Even though the separate state was formed for Muslim ,a considerable section of Muslim remained in India .There were Indian Christian ,Anglo-Indian and some Europeans who opted India as their homeland .The framer of the Indian Constitution were keenly aware of

[1] D.S Prakash Rao " Protection of minorities rights: Need of the hour " ,Legal Journal quest for justice ,vol –II ,No -1 ,Academic year 2006- 07.pp-63-64

the fact that these religious minorities should have to be assured [2] "*Liberty of thought, belief, faith and worship."*

The founding father of the Constitution tried to satisfy the hope ,aspiration land desire of the minority by safeguarding the educational rights of the minority .At the fifth session of the Constituent Assembly of India ,The Chairman (The Honorable Dr Rajendra Prasad) assured the minorities that: [3]

" To all the minorities in India we give the assurance that they will receive fair and just treatment and there will be no discrimination in any from against them .The religion ,their culture and their language are safe and they will enjoy all the right and privileges of citizenship ,and will be expected in their turn to render loyalty to the country in which they live and its constitution .To all we give the assurance that it will be our endeavour to end poverty and squalor and companions , hunger and disease ,to abolish distinction and exploitation and to ensure decent condition of living".

Indian democratic set up and constitutional safeguards respect the right of minorities and it has been placed under Article 29 and 30[4] in the Part III of the Indian Constitution.

Through the perusal of the constitution of India it is found that expression "minorities" has been employed only at four places in the constitution of India .Head note of the article 29[5] use the word minorities' .Then again the expression minorities or minority has been employed in head note of Article 30 and sub clause (1) & (2) of Article

30 [6].At this stage it may be noted that the expression 'minorities' has been used in Article 30 on two sense one based on religion and other based on language [7].

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[2] Ibid
[3] C.A. Deb,Vol 5, P-2
[4] Realted to rights of minorities .Dealt later in this paper
[5] Ibid
[6] Ibid
[7] Molishree ,Minority Educational Institution –A critical Analysis ,http:// ccs.in //ccindic//interns2006/minority % 20 education %20% Molishree .pdf visited on 05.07.2011

That expression “minority “needs to be discussed in details in order to pierce the miasma of confusion and misunderstanding .The expression “*minority”* has been derived form the Latin word “minor” and suffix “ity” which means “*small in numbers*”[8].According to Encyclopedia Britannica minorities means “*group held together by ties of common decent, language or religious faith and feeling different in these respects from the inhabitant of a given political entity”*

The U.N Sub –Commission on Prevention of Discrimination of Minorities has defined minority as under:

1) *The term “ minority ” includes only those non –documents group of the population which posses and wish to preserve stable ethnic, religious or linguistic traditions or characteristic markedly different from those of the rest of the population;*

2) *Such minorities should properly include the number of persons sufficient by themselves to preserve such traditions or characteristic ; and*

3) *Such minorities should be loyal to the state of which they nationals*.

The researcher would like to focus Indian Constitutional provisions regarding minorities.

Article 29 -Protection of interest of minorities.

(1) *Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same*.

[8] Ibid

(2) No citizens shall be denied admission into any educational institution maintained by the State or receiving aid out of State fund on ground only of religion, race, caste, language or any of them.

Article 30 .Right of Minorities to establish and administer educational institution:

(1) All minorities ,whether based on religion or language shall have the right to establish and administer educational institution of their choice

[(1A) In making any law providing for the compulsory acquisition of any property of and educational institution established and administered by a majority,referred to in clause (1) ,the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under the clause][9]

(2)The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of minority whether based on religion or language.

Beside these, Article 350A says 'facilities for instruction in mother tongue at primary stage" [10]

Article 350 B says "special officer for linguistic minorities " [11]

It is crystal clear that the term minority is not defined in the constitution .The supreme court of India settled this by judicial interpretation .In **Re Kerala Education Bill**[12] where the Supreme court ,through S.R Das C.J ,suggesting the techniques of arithmetic tabulation held

[9] Ins: by the constitutional (Forty four Amendment Act ,1978, Sec 4 (w.e.f 20/06/1999
[10] Article 350 A Constitution of India
[11] Article 350 B Constitution of India
[12] A.I.R 1958 S.C 956

that "minority means a '*community" which numerically less than 50 percent" of total State population*" .In **A.M.Patroni vs Kesavan**[13] , a division bench of the Kerala High Court held that the word "*Minority*" is not defined in the constitution ,and in the absence of special definition ,any community religious or linguistic –which is numerically less than 50 percent of the population of the State concerned, is entitled to fundamental right guaranteed by Article 30 of the constitution .In the case of **D.A.V College ,Bhutinda vs State of Punjab and others**[14] ,the Supreme Court held that " *what constitute a linguistic or religious minority must be judge in relation to the State inasmuch as the impugned Act was a State Act and not in relation to whole of India".* In **Stephen's College vs University of Delhi**[15] , The Court held that the minority under Article 30 must necessarily means those who form a distinct or identifiable group of citizen of India .In **Bramchari Sidheswari vs State of West Bengal**[16] , the Supreme court has held that the Ram Krishna Mission established by Swami Vivekanda to propagate the Vedanta values as expounded by Ram Krishna is not a minority religion separate and distinct from Hindu religion, but a religious sect or denomination of Hindu religion and therefore not entitled to claim the fundamental right under article 30(1) of the constitution of establishing and administering educational institution of their choice. Chief Justice Kirpal in **T.M.A Pai Foundation vs State of Karnantaka**[17] , held that *"a linguistic and religious minority are covered by the expression 'minority' under Article 30 of the Constitution .Linguistic lines, therefore for the purpose of determining minority, the unit will be the State and not the whole of India. The religious and linguistic minorities who have been put at per Article 30 have to consider State wise".* In **Bal Patel vs Union of India[18],** the court held that the Central Government has to exercise its power for identification of minority group not merely on the recommendation of the Commission but on consideration of the social, cultural and religious condition of the community in such State. Statistical data produced to show that a majority of the community belongs to the affluent class of industrialist, businessmen, professional and propertied class, it may not be necessary to notified them minority under the Act and may not extend any special treatment or protection to them as minority under the Act.

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[13] A.I.R 1965 Ker 75 at p-76
[14] 1971 (Supp)S.C.R 677
[15] A.I.R 1992 SC 1630
[16] (1995) 4 SCC 464
[17] A.I.R 2003 SC 355 at p-418
[18] AIR 2005 SC 3172

Azeez Basha v/s *Union of India*[19], is a very important decision on the right conferred by Art 30(1) on linguistic and religious minorities to establish and administer educational institutions. The petitioner impugned the validity of the Aligarh Muslim University (Amendment) Act, 1965, which amended the Aligarh Muslim University Act 1920, ("the Act of 1920") on the ground that the amendment deprived the Muslim minority community of its right to manage the University established by the community. Before the impugned Act, an amending Act of 1951 had deleted the proviso to 5.23(1) of the Act of 1920 according to which members of the "Court" had to be Muslims. The amendment had not been challenged because in fact the set up of the University had continued unchanged. The effect of the two amendments was that the "Court" ceased to be the supreme governing body of the University and it was not necessity that it should consist exclusively of Muslim.

The Supreme Court held the very expression "establish and administer" used in Art 30(1) was to be read conjunctively that is to say two requirement has to be fulfilled under Art 30(1), namely that the institution was "established" by the community and that its administration was rested in the community. The Court went into the meaning of the word "establish" and after referring to various dictionary meaning it said that the word "founding" is not the only meaning of the word "establish", but it also means "to bring into existence." Therefore, the right given by Art 30(1) to the minority is 'to bring into the existence' an educational institution, and if they do so, to administer it. Keeping this concept in view, the court examined the history of the Aligarh Muslim University and not withstanding the fact that it was clear that it was a Muslim minority that made an effort, collected the money and handed over the properties of the Mohammedan Anglo-Oriental College and those of the Muslim University Association, the University, in fact, owed its birth to the Aligarh Muslim University Act and that it was not 'brought into existence' by the Muslim minority community. The Court observed that it could not be said that the University was established by the Muslim Community because the provision of section 6 of the Act of 1920 that the degree conferred by the University would be recognized by the Govt. It showed that the Aligarh Muslim University when it came to be established in 1920 was not established by the Muslim minority, for the minority could not insist on the recognition by Govt. of the degrees conferred by any University established by it.

In the recent case of **Naresh Agarwal v/s Bharat**,[20] the Allahabad High Court held that A.M.U. was not a minority institution. The Court struck down the amendment made this

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[19]AIR 1968 SC 662.

[20]. The Times of India, January 6, 2006.

effect in the statute of AMU for reservation to Muslim students. The Court, followed the ***Azeez Basha* v/s *Union of India***[21] case rulings.

In the case of ***S.K. Patro* v/s *State of Bihar***,[22] the honorable Supreme Court held that the more fact that funds were obtained from abroad for assisting in setting up and developing the school which was established by a minority in India, or that its management was carried on at times by some person who were not born in India could not be ground to deny to it the protection of Art. 30(1).

In the case of ***State of West Bengal* v/s *Guru Nanak Educational Trust***,[23] the court held that it may be even by a single philanthropic individual with his own means in the interest of minority community.

In the case of ***State of Kerala* v/s *Mother Provincial***[24] the court had said the following points:

> *"It matters not if a single philanthropic individual with his own means, found the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community."*

Art. 30 gives right to the minority as such, and not to an individual member, and the right is meant to benefit the minority by protecting and promoting its interests. There should be a nexus between the institution and the particular minority to which it claims to belong. A considerable section of the minority must be benefited by the institution. The test is

> *"whether the institution does in any manner serve or promote the interest of the minority to which it claims to belong?"*[25]

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21. Supra note 19.
22. AIR 1970 SC 259.
23. AIR 1978 Cal 232.
24. AIR 1970 SC 2079.
25. Samuel v/s District Education Officer, AIR 1982, AP 64.

In the case of ***Andhra Pradesh Christian Medical Ass.* v/s *State of Andhra Pradesh*,**[26] the court held the following points:

> *"What is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities."*

In ***Arya Samaj Shillong* v. *State of Meghalaya*,**[27] the Gauhati High Court has held that the Arya Samaj Hindi Kanya Vidyalaya School in Meghalaya is a minority institution and therefore the State has not power to change the constitution of the Managing Committee of the school. Arya Samaj in Meghalaya is both linguistic as well as religious minority. It has a distinct entity. Hence, it was held that the notification directing the school to follow instructions the change of the constitution of Managing Committee was unconstitutional and invalid.

In the case of ***T.M.A. Pai Foundation* v/s *State of Karnataka***,[28] a question was raised, ***"Is there a fundamental right to set up educational institution and if so, under which provision?"***

The answering of the court was:

> *"With regard to the establishment of educational institutions, three articles of the constitution come into play. Article 19(1)(g) gives the right to all the citizens to practise any profession or to carry on any occupation, trade or business; this right is subject to restrictions that may be placed under Article 19(6). Article 26 gives the right to every religious denomination to establish and maintain an institution for religious purposes, which would include an educational institution. Article 19(1)(g) and Article 26, therefore, confer rights on all citizens and religions denomination to establish and maintain educational institution. There was no serious dispute that the majority community as well as the linguistic and religious minority would have a right under Article 19(1)(g) and 26 to establish educational institutions. In addition, Article 30(1), in no uncertain terms, gives*

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[26]. AIR 1986 SC 1490.
[27]. AIR 2001 Gua. 47.
[28]. AIR 2003 SC 355 at p. 379.

the right to the religious and linguistic minorities to establish and administer educational institution of their choice."

In the case of ***P.A. Inamdar* v/s *State of Maharashtra*,**[29] the question was raised, can there be an enquiry to identify the person or persons who have really establish the institution?

With regard of this question, the honorable Supreme Court has taken the proposition of Pai Foundation[30]

> *"Pai Foundation[31] has clearly ruled in favour of the State (or a province) being the unit for the purpose of deciding minority. By this declaration of law, certain consequence follow. First every community in India becomes a minority because in one or the other State of the country it will be a in minority – linguistic or religious. What would happen if a minority belonging to a particular State establishes an educational institution in that State and administers it but for the benefit of members belonging to that minority domiciled in the neighbouring State where the community is in majority? Would it not be a fraud on the constitution? In St. Stephen's.[32] Their Lordships had ruled that Article 30(1) is a protective measure only for the benefit of religious and linguistic minorities and "no ill-fit or camouflaged institution should get away with the constitutional protection (SCC p. 587, para 28). The question need not detained us for long as it stands answered in no uncertain term in Pai Foundation. Emphasizing the need for preserving its minority character so as to enjoy the privilege of protection under Article 30(1), it is necessary that the objective of establishing the institution was not defeated.".*

Except **Azeez Basha Case**[33] regarding minority institution the Court held that a person from minority community has set up the institution or the financial assistance coming from

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29. (2005) 6 SSC 537 at p. 592.
30. TMA Pai Foundation v/s State of Karnataka (2002) 8 SCC 481.
31. Ibid.
32. St. Stephen's College v/s University of Delhi (1992) 1 SCC 558.
33 Azeez Basha vs Union of India, AIR 1968 SC 692

minority community for setting up the educational institution, would be treated as minority institution .:

Article 29 deals with the concept of protection of the interest of minorities and Article30 says about the right to establish and administer educational institution of their choice. In general it can be said the scope of minority right are:

1. To preserve the language, script or culture

2. To establish the educational institution

3. To administer educational institution

4. To administer according to their choice

It can be said that a minority can preserve language, script, culture through the educational institution .But the right to minority education doesn't indicate religious teaching but general secular education .Generally establish means coming into existence of an educational institution by the minority and administer means day to day administration of the institution. The power of administration has many facet like appointment of teachers, admission of the students, choice to determination of language of educational institution etc.The observation of the Supreme Court in **Re Kerala Education Bill**[34] that '*the right conferred minorities to administer educational institution of their choice is not an absolute right*'

The minority educational institution can be classified into:

(1) Recognised aided institution

(2) Recognised unaided institution.

[34] Supra note 12

(3) Unregonised institution

The unaided minorities institution is also subject to regulation of the Government .The Honourable Supreme Court of India by their judicial dictum tried to interfere the "letter and spirit "of the constitutional provision regarding the minority right to education at this post modernism and global era keeping in view the recent socio –economical jurisprudential orientation and the new trend of unaided minority educational institution. To satisfy the new trend of liberalization, privatization and globalization the intelligent judiciary in **T.M.A Pai Foundation case**[35] has overruled the view of **Unnikrishan**[36] that the nationalization of education and surrending the process of selection to the State but **T.M.A Pai Foundation**[37] allowed to educational intuition to generate a reasonable surplus to meet the cost of expansion and augmentation of facilities who would not amount to profit . In case of **Islamic Academy** [38],the ratio of **Pai Foundation**[39] that autonomy of unaided non minority institution is an important facet of their right under Article 19 (1) (g) and in case minority under Article 19(1)(g) read with Article 30 of the constitution has been ignored .

The guideline for reservation ,admission procedure, fees structure , capitation for unaided private institution both minority and non minority in **P.A. Inamdar vs State of Maharashtra**[40] can be summarized as follow:

1 **Reservation** : In unaided private professional institution (both minority and non minority) ,the Court held that the scheme for reservation of seats as State quota is violative of Article 30 and 19(1)(g) .Its affect the autonomy of such institution .However a limited reservation of 15 % may be made for Non Resident of India (N.R.I) depending on the discretion of management subject to two condition: First ,such seats should be utilized for benefit of N.R.I wards and secondly money collected should be utilized for the benefit of economically backwards students.

[35] T.M.A Pai Foundation vs State of Karnataka AIR 2003 SC 355
[36] Unni Krishna ,J.P vs State of A.P , (1993) I SCC 645
[37] Supra note 22
[38] Islamic Academy vs State of Karnataka AIR 2003SC 3724
[39] Supra note 22
[40] AIR 2005 SC 3236

2**. Admission procedure:** The court held that there is nothing wrong in having centralized entrance test being held for one group of institution imparting same or similar education .Admission to be made from the list of successful candidate without altering interse merit. It would benefit twin objects, first serving student free from exploitation and secondly, ensuring merit admission.

3. Fee Structure: It was held that every institution free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee directly or indirectly or in any form is charged. Fees structure can be regulated for preventing profiteering .The right to establish and administer an institution within the meaning of Article 30(1) of the constitution includes the right to fix reasonable fee structure.

4. Capitation: Charging of capitation fees is not to be permitted.'*Profession*' has to be distinguished from business or a mere 'occupation'

Survey of Existing literature

1. **Basu, Das Durga**. Introduction to the Constitution of India. 19th Ed. Agra: Wadha & Company Law Publishers, 2004

The researcher has found that a short discussion of Article 29 and 30 of the Indian Constitution with case law at the page of 119 and a researcher has got the general idea from this book.

2 **Bakshi, P.M**. The Constitution of India with selective comments. 5th Ed. Delhi: Universal Law Publishing Co. Pvt., 2003.

The researcher has found that Article 29 and 30 of the Indian Constitution is being well discussed with case references. The researcher has taken idea from this book .

3. **Constituent Assembly Debates Vol. III,IV ,V,VII**

Here the researcher has found the draft constitution and the debate on Article 23 .Subsequently , at the revision stage the drafting committee divided the article in to two separate Article 29 comprising the first two clauses andArticle 30 the third clauses.

4. **Inam, Mohammad**. Minorities and the Law. New Delhi: Indian Law Institute, 1992.(Edited Book)

From this book the researcher searched out the article , " *The right of linguist minorities :Their protection and national integration"* by Ramesh Narain Mathur, at page 353 to 367.The researcher has made the proposed chapter 9 i.e protection of Minorities and the idea has emerged from this book.

5. **Jain, C.** The Constitution of India Select Issues and Perceptions. New Delhi: Taxman Publication Pvt. Ltd., 2000.

The researcher got a vivid picture regarding the cultural and education rights of the minorities from this book.

6. **Jain, Kagzi M.C.** The Constitution of India (Vol. 2) 6th Ed. New Delhi: Indian Law House, 2001.

From this book the researcher adopted some idea.

7. **Jain, M.P**. Indian Constitutional Law. 5th Ed. New Delhi: Wadha and Company Nagpur, 2003.

From this book the researcher has imparted the vivid picture of protection of the interest of minorities, right of minorities to establish educational institution , regulation of minority educational institution, page 1221 to 1252.

8. **Malik, Surendra & Summet**. Supreme Court Educational Institutions Cases. 7th Ed. Lucknow: Eastern Book Company; 2007.

This book dealt with case related to educational institution which reduced the labour of the researcher to get the relevant cases easily

9. **Pandey, J.N.** Constitutional Law of India. 46th Ed. Allahabad: Central Law Agency, 2009.

The researcher got the help from chapter 15 , i.e cultural and educational right of the minorities of this book, page 328 to 346.

10. **Reddy P, Jaganmohan**. Minorities and the Constitution.. University of Bombay, 1981

The researcher enriched himself from this book by getting the following points:

(a) Minorities concept genesis (page 2 -18)

(b) Minorities problem in U.S.A (Page 18-20)

(c) Minorities in West Asia (Page 21 -28)

(d) Minorities Protection – Effective measures (Page 28 – 33)

(e) The Problem of Minorities in India (Page 37 -78)

(f) Emergence of Minorities safeguards (Page 80 -118)

11. **Seervai, H.M.** Constitutional Law of India (Vol. 2). 4th Ed. Delhi: Universal Law Publishing Co. Pvt. Ltd., 1991.

The case laws relating to cultural and educational right of minorities are well conversant and researcher is benefitted from this book.

12. **Shukla, V.N**. Constitution of India. 10th Ed. New Delhi: First Foundation, 2006.

The constitutional proposition and case laws are discussed lucidly

13. **Subhash, C. Rashyap**. The Framing of India's Constitution. Delhi: Universal Publishing Co. Pvt. Ltd., 1968.

Constituent Assembly Debate regarding minorities right is very elaborative.

ANNUAL SURVEY

1. Annual Survey of India Law Vol. XXV Year 1989.
2. Annual Survey of India Law Vol. XXXVIII Year 2002.
3. Annual Survey of India Law Vol. XXXIX Year 2003.
4. Annual Survey of India Law Vol. XL Year 2004.

From this Annual survey the researcher has examined legal proposition with regarding the cultural and educational rights of minorities.

JOURNAL

1. Aligarh Law Journal Vol. XVI & XV year 1999-2000.

Form this journal the researcher found the article " *Safeguard to minority educational institution :Judicial Attitude and administrative process*" by Prof Aklaque Ahmed ,Pg 90-98.

2. Aligarh Law Journal Vol. XVI & XVII Year 2000 & 2002.

The researcher found the article " *Minorities educational institution and the Supreme Court……. A Comment* by Prof. (Dr) Md. Ishaque Kureshi

3. Journal of Indian Law Institute ,Vol 29: 4 ,Pgg 80 -88

In this Journal the researcher has found an article written by P.M.Bakshi ," *Right of minorities ",pg 580-584*

4. Journal of Constitutional and Parliamentary Studies Vol. 38, Number 1-4 Jan.-Dec. 2004.

The researcher had gone through this Journal and searched out "*Fundamental Right to education: Myth and Reality*" by Swarparna Chaturvedi.

6. Journal of Constitutional and Parliamentary Studies Vol. 39 Number 1-4 Jan.-Dec. 2005.

In this Journal the researcher has gone through, "*Issues and Problem of Education among Muslim along with status of their Higher Education since Independence* ", written by Pratima Gangwar ,pg187-199.

7. Kashmir University Law Review Vol. 1 Issue 1 Year 1994.

The Researcher searched out "*Minority Rights under Indian Constitution : Emerging Issues",* by Chandra Pal Sheoran , Pg 25-33

8. Legal Journal Quest for Justice Vol. 1 No. 1 year 2005-2006.

(A) " *Protection of Minorities Rights : Need of the Hour"* by D.S Prakash Roa ,Pg 63-69 ,is very helpful for the research work .

(B) " *Reservation for Backward Muslim :Constitutional Jurisprudence* "by M.Shabbir , Pg 1-12.

On Line Journal

1.Molishree **," "** *Minority Educational Institutions* ***–A Critical Analysis*** ,http//cc.s.in//cciindic//interns2006 /minority %20% education Molishree .pdf visited on 05/07.2011

2.N.R Madhava Menon ,"Minortiy Right: and education ", http://www.hindunet.com /2003/01/01/stories /200301100043100.htm,visited on 16.02.2008

3. Varun Shivahare ,"Minority rights : The Judicial Approach ,file//localhost/G:/ Minority % 20%Right The % Judicial %20 Approach% 20-%Autho…,visited on 07.07.2011.

4. www.airwebworld.com visited on 10.03.2011.

From this the researchers has found the following articles.

(a) Dr Anand Paliwal ,"Minority Rights and Nationalist Opinion "

(b) Mr Abhishek Tripathy ,"The Constitution of Indian and the rights of Minorities communities vis –a –vis Education

PERIODICALS

1. Nation and the World Nov. 16, 2005.

2. Radiance Views Weekly Vol. No. XLIV Issue No. 46.

3. Human Rights Today .Vol VIII Nos 4 October –December 2006

NEWSPAPER

The Times of India, Jan. 6, 2006.

The Times of India, July 1, 2011

REPORT

1.Minorities Commission. Fourth Annual Report (1983).

2. Misra Commission Report

3. Sachar Committee Report 2006

iv

Chapter 4 of the Sachar Committee Report that is " Educational condition of Minorities " says about various educational problems and its solution

CASE LAWS

A

1. Aziz Basha v/s Union of India A/R 1968 SC 672.
2. Arya Pratinidhi Sabha v/s State of Bihar AIR 1958 SC 956.
3. Andhra Pradesh Christian Medical Ass v/s State of Andhra Pradesh, AIR 1986 SC 1490.
4. Ahmedabad St. Xavier's College Society v/s State of Gujarat, AIR 1974 SC 1389.
5. All Saints High School v/s Government of Andhra Pradesh, AIR 1958 SC 956.
6. All Bihar Christian Schools Association v/s State of Bihar, AIR 1988 SC 305.
7. Aldo Maria Patroni v/s F.C. Kesawan, AIR 1965 Ker. 75.
8. Arya Samaj Shillong v/s State of Meghalaya AIR 2001 Gua 47.

B

9. Board of Secondary Education & Teachers Training v/s Jt. Director of Public Instruction (1998) 8 SCC 674.

v

10. Benson Enock Semual v/s State of Gujarat AIR 1984 Guj 56.
11. Bal Patil v/s Union of India AIR 2005 SC 3172.

D

12. D.A.V. College, Bhatinda v/s State of Punjab and others 1971 (Supp) SCR 677.

13. Deccan Model Education Society v/s State of Karnataka AIR 1983 Kat 207.

F

14. Frank Anthony Public School Employees' Assn v/s Union of India AIR 1987 SC 311.

M

15. Manager, Corporate E Agency v/s State of Kerala AIR 1990 Ker. 356.

R

16. Re-Kerala Education Bill AIR 1958 SC 976.

17. Rajeshwari Memorial Basic Training School v/s State of Kerala AIR 1973 Ker 87.

18. Rev. Father W. Proost v/s State of Bihar AIR 1969 SC 465.

S

19. State of Bombay v/s Bombay Education Society AIR 1954 SC 561.

20. Sidhrajbhai v/s State of Gujarat AIR 1963 SC 540.

21. SK Patro v/s State of Bihar AIR 1970 SC 259.

22. State of Kerala v/s Mother Provincial AIR 1970 SC 2079.

23. Samuel v/s District Education Officer AIR 1982 AP 64.

24 Srikrishna v/s Gujarat University AIR 1962 Guj 88.

25. State of Tamil Nadu v/s The Melapalayam Mushum Maglir Kalvi Sangam AIR 1998 Mad 21.

26. Socio Literati Advancement Society, Bangalore v/s State of Karnataka AIR 1979 Knt 217.

27. State of Karnataka v/s Islamic Academy (2003) 65 CC 697.

28. State of Maharashtra v/s P.A. Inamdar (2005) 65 CC 537.

29. State of Bihar v/s Father W. Proost AIR 1969 SC 465.

30. State of West Bengal v/s Guru Nanak Educational Trust AIR 1978 Col. 232.

31. St. Stephen's College v/s University of Delhi (1992) 1SCC 528.

32. St. Xavier's College v/s State of Gujarat AIR 1974 SC 1389.

33. State of Karnataka v/s English Medium Students Parents Asim (1994) 15 CC 550.

34. State of Maharashtra v/s Usha Mehta (2004) 6 SCC 267.

35. State of Bihar v/s Managing Board, M.T.M. AIR 1984 SC 1757.

36. St. John's Teachers Training Institute v/s State of Tamil Nadu (1993) 3 SCC 594.

T

37. T.M.A. Pai Foundation v/s State of Karnataka (2002) 8 SCC 481.

38. The Melapalayam Mushum Magalir Kalvi Sangam v/s State of Tamil Nadu AIR 1998 Mad 21.

U

39. Unni Krishnan, J.P. v/s State of A.P. (1993) 1 SCC 645

Statement of problem

Problem 1

As per the Government Resolution July 4,2008 issued by the Minority Development Department which clearly says that only institution running higher and technical education and professional courses have to compulsorily admit 50 % students from the minority community. But the problem lies that there is no clear cut proposition regarding specific percentage of the reservation of seats in School level .This is a room for abuse of Government power and many minority schools are facing threat from the department of minority minister .The minorities minister, Mr Arif Naseem Khan threatened to withdraw the

minority status on the complaints lodged by the a group of PTA and NGO'S from St. Mary 's, St. Xavier's, Christ Church and Holy Family school are not following the rules and regulation of Minority department as they are providing reservation of seats in School level.

Problem 2

Recently the apex court in T.M.A Pia case gave ambiguous judgments which pave the way for some more confusion. In Islamic Academy of Education case, the Supreme Court of India further clarified it status regarding right to establish and ad minster educational institution by both minorities and non minorities and the Government control and regulation. It is pleasant surprise that on the shoulder of the minorities, the fundamental right of the non minorities and majority were carried further and expanded to an unprecedented extent specially with regard to the right of all citizen and religious denomination ,including majority ones to establish and administer educational institution.

Problem 3

In the case of P.A Inamdar vs State of Maharashtra ,the court held that every institution is free to devise its own fees structure .The Minority Educational Act ,passed by Central Government are legalizing the commercial interest of management .

The problem is that these will be detriment of the large section of the students from low income and pauper families who take benefit from minority educational institution.

Problem 4

There is no Central legislation for reservation of backward minorities other than minorities' educational instiution .Really it is a great problem to an area where there is no minority run institution. This is the gross violation of Human Right of the minorities.

Problem 5

Special provision in the constitution and the law and policy measures for the protection of the right of the minorities are often viewed in India as being in contravention of the basic principles of liberal democracy which seem to require recoginization and protection only of citizen and persons as individual and not as a members of any group based on religion, race or ethnicity.

Problem 6

Parliament enacted the National Commission for Minorities to establish the National Commission for Minorities (N.C.M) on statutory basis. An interesting feature of this Act is that it fails to define the term minority.

Problem 7

Now it is to analyse that how far the National Commission for Minorities is successful in integrating the minority in the national mainstream in the United and integrated Bharat, so discrimination of minority and majority comes to an end.

Problem 8

The allocations of fund in recent budget for educational development of minorities are insufficient to cater the need of the society.

Problem 9

The State are autonomous in their perspective legislative sphere and laws are passed by the majority .So there is a room for biasness.

Problem 10

Minority has the right to establish and administer educational institution but there is no express right in the constitution to get affiliation.

Problem 11

There is no proper data of unorganized minority run institution specially madrasa.

Problem 12

Sachar Committeee Report is not implementing properly by the ruling government both Central and State .The Sachar Committee shows the following:

(a) 25 percent of Muslim children in the 6-14 year age group have either never attended school or have dropped out.

(b) Drop outs rates among Muslim are higher at the level of primary ,middle and higher secondary.

(c) The Committee observed that since artisanship is a dominant activity among Muslim technical training should be provided to even those who may mot have completed schooling.

(d) In premier colleges only one out of 25 under-graduate students and one out of 50 post-graduate students is Muslim.

(e) Access to government schools for Muslim children is limited.

(f) There is non –availability of schools with easy reach for girls at lower levels.

(g) Absence of girls hostels and female teachers are also impeding factors

Objective of the study

The objective of this research is very wide and it leads to the following points

(1) To enquire into the social and political roots of cultural and educational rights of the minority based upon language and religion.

(2) To find out how Article 29 and 30 come into existence.

(3) To find out the working of the constitution in this field

(4) To trace out when an institution would be a minority institution .

(5) To indentify the scope of Article 29 and30 and 350A and 350B of the constitution.

(6) To put a focus on the power of the Minority to establish and administer educational institution of their choice in reference to aided and unaided minority educational institution for imparting general and professional education for the minority and non minority .

(7) To examine up to what extent the State can make regulation for controlling the minority educational institution .

(8) To analyse the judicial response in this field.

(9) To analyse Sachar Committee report for the educational upliftment of the minority .

(10) To put a light on the success and failure of the Central and the State Government regarding the initiations of various programme and policies for educational development of the minorities and also to appreciate and criticize the role of the National Minorities Commission for the development of the minority

Hypothesis

The Hypothesis of the researcher is as follows:

(1) Educational right of the minority provides the minority a beautiful mechanism for the protection of their interest by the help of setting up an educational institution and managing the intuitions by a person /persons from minority community according to their choice. The minority institution is subject to restriction by the State for the standarness of the education.

(2) Educational is a national wealth which must be distributed equally and widely in creating an egalitarian society keeping in view of social ,economic and political justice.

(3) The probable solution of problem No -1 is that it is the need of the hour to form a specific government resolution regarding the reservation of the seats in school level for the minority so that the minority institution can administer the institution to promote their inters in the society.

(4) The general assumption of the researcher to solve problem No 3 is to make rule ,regulation by the government to check profiteering mechanism by the management.

(5) The probable solution of problem No -4 is that it is an urgent need to provide reservation of backward minorities like Muslim and Christian in the field of education in non minority based area where there in no minority institution to cater the educational need of the minority. It must be adjust by the virtue of Article 15(4) and 16(4) of constitution law of India.

(6) The probable solution of Problem No -8 is to allocate more fund in the Budget for the educational development of minority.

(7) The probable solution of problem No -12 by implementing immediately by the Central and State.

The researcher is searching the answer problem No 2 ,5 ,7,9,10 and 11 .

Methodology

The researcher has adopted the doctrinal method and tried to analyse legal proposition, legal framework and case laws and decorated it in a systematic and logical manner .The researcher has made an analytical study on the focus of cultural and educational rights of the minorities keeping the view in the mind ,the concept of minority and the rights belong to them in the sphere of establishment and administration of minority institution of their choice. Till yet no field work has done by the researcher.

Proposed Chapterisation

Chapter 1 : Introduction

Chapter 2 : Historical Background

Chapter 3 : Constituent Assembly Debates on Cultural and Educational Rights of Minorities.

Chapter 4 : Scope of Minority Rights

A : Right to establish and administer

B : Medium of Instruction

Chapter 5 : Regulatory Measures of Minority Institution

A : Affiliation

B : Appointment of Teachers.

C : Employment condition

D : Admission Procedure

E : Fees Regulation

Chapter 6 : Educational Reservation for Backward minorities other than minorities institution

Chapter 7 : Role of the government for minority education

Chapter 8 : Role of the National Minority Commission for Minority Education.

Chapter 9 : Protection of linguistic minorities.

Chapter 10 : Concluding Comments

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